

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 108 of 2004

with

CIVIL APPLICATION No 5942 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Versus

DEVRAJBHAI VANRAJBHAI MALAVIYA

Appearance:

1. Appeal from Order No. 108 of 2004
NANAVATI & NANAVATI for Appellant No.
MR MB GANDHI for Respondent No. 1
 2. Civil Application No. 5942 of 2004
MR MB GANDHI for Appellant No.
NANAVATI & NANAVATI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/10/2004

ORAL JUDGEMENT

This appeal from order is filed by the original defendant of Civil Suit No.3903 of 2001. The aforesaid suit is filed by the opponent herein for a declaration and injunction. The case of the plaintiff in the said suit is that the plaintiff is in possession of Block No. 321-577, situated in Revenue Survey No.184, T.P. Scheme No.11, Ward No.18, at Bapunagar, Ahmedabad. The said block is constructed by the Gujarat Housing Board and according to the plaintiff he is in possession of the said block from the very beginning. The Municipal Corporation issued notice under Section 260(1) of the Bombay Provincial Municipal Corporations Act directing the plaintiff to demolish the unauthorised construction which he has made in part of the disputed property. The Municipal Corporation thereafter passed the order under Section 260(2) of the BPMC Act for demolishing the construction. The said action of the Corporation has been challenged by the plaintiff by filing the aforesaid suit on the ground that the documents produced along with the reply filed by the plaintiff to the notice issued under Section 260(1) of the BPMC Act were not considered by the Corporation while issuing the order under Section 260(2) of the said Act. During the pendency of the said suit injunction application was pressed into service with a request that the Corporation may be restrained from acting further on the notice for demolition. Before the trial court the Corporation took the stand that the Gujarat Housing Board has written a letter to the Corporation for the removal of the encroached portion of the land as the said land is required for allotting the same to the Police Housing Corporation. The trial Court came to the conclusion that prima facie the construction in question is in existence since long and thereafter said area is included in the limits of Ahmedabad Municipal Corporation. The trial court ordered that the Corporation or the Housing Board may take appropriate action if it is proved that the plaintiff has encroached upon the part of the disputed property. The trial court has allowed the said injunction application.

2 The said order of the trial court is challenged by way of the present appeal from order. At the time of admitting this matter, the learned single judge of this Court (Coram: Ravi R Tripathi, J.) permitted the respondent - original plaintiff of the suit to move an application for joining the Housing Board as a party

respondent. Accordingly, the Gujarat Housing Board is also made party-respondent in the present Appeal from Order.

3 Mr S.S. Belsare who is appearing for the Gujarat Housing Board has tried to rely upon some documents. In my view, since the Gujarat Housing Board is not a party in the suit and since said documents were not produced before the trial court such documents cannot be considered in this Appeal from Order. Considering the said aspect and considering the fact that this Court has permitted the Gujarat Housing Board to be joined as party-respondent in the Appeal from Order, it would be just and proper to permit the Gujarat Housing Board to apply before the trial court for being joined as a party to the suit. Mr Gandhi, learned advocate for the original plaintiff, fairly submitted that if any such application is made, the plaintiff will not object to such an application and will give consent for allowing the Gujarat Housing Board to be joined as defendant no.2 in the said suit. In case the Housing Board is joined as defendant no.2 in the suit, it will be open for the Housing Board to produce the necessary material in connection with the hearing of Notice of Motion, exh.6, and the trial court shall decide the application de novo after considering the say of the Housing Board. Under the circumstances, this Appeal from Order is partly allowed. The matter is sent back to the trial court for deciding the application exh.6 de novo in light of what is stated herein above. Mr Belsare undertakes before this Court that the Housing Board will file the application for joining as a party within four weeks from today. The trial court thereafter shall decide the injunction application afresh and may dispose it of in accordance with law. Till final decision of Notice of Motion is given by the trial court, the injunction granted by the trial court initially shall remain in force. This Appeal from Order is, therefore, partly allowed to the aforesaid extent.

4 In view of the disposal of the appeal from order, no orders are required to be passed on Civil Applications Nos.5942 of 2004 and 2870 of 2004.

(P.B. Majmudar, J.)

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